IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.922 OF 2007
WITH
CIVIL APPLICATION NO.1271 OF 2007

Dadar Manish Market Co-op. Society ..Appellant.
Vs.
M/s. D.K.Enterprises & Ors. ..Respondents.

Mr.Godbole for Dinesh Shah, advs. for the Appellant.

CORAM : J.H.BHATIA, J.
DATE : DECEMBER 18, 2007.

P.C.:

1. Mr.Godbole the learned counsel for the plaintiff/appellant points out that earlier when Appeal from Order No.315 of 2007 filed against rejection of application for ad-interim relief was disposed off by this Court, by order dated 13 June, 2007, direction was given in the (IV) paragraph that the notice of motion will be decided on its own merits without being influenced by tentative findings, recorded while passing the impugned order and confirmation thereof by this Court. Mr. Godbole pointed out that in spite of this direction while passing the impugned order and deciding the notice of motion, the learned trial Court has not considered certain legal provisions independently. All the observations made by the trial Court in its earlier order has only referred to the findings of the predecessor. He also pointed out that

several authorities were referred but the learned trial Court Judge did not consider them observing that those authorities were already considered by the predecessor while passing the earlier order. According to Mr.Godbole atleast two of those authorities **2007(2) ALL MR 398 (Supreme Court) M/s. Jayantilal Investments v. Madhuvihar Co-op. Housing Society & Ors.** and **2006(6) Maharashtra Law Journal Page 166 Sai Amrut Co-op. Housing Society Ltd. Mumbai and another v. Chandra Tahilram Tolani & Ors.** were not even reported when the earlier order was passed and, therefore, those two authorities could not have been considered by the earlier Judge and were also not considered by the trial Court Judge while passing the impugned order on the notice of motion. After Mr.Godbole pointed out the above circumstances, the learned counsel for the parties as well as the respondent no.5, who is present in person conceded that the impugned order may be set aside and the matter may be remanded back to the trial Court again for consideration and decision of the Notice of Motion No.817 of 2007 again after hearing the parties fully and without in any manner referring to the observations made by his predecessor while giving tentative findings at the time of deciding application for ad-interim relief.

2. Therefore, with consent of the parties, the impugned order dated 28th September, 2007 in Notice of Motion No.871 of 2007 is hereby set aside. Notice of Motion is remanded back to the trial Court for hearing and disposal afresh. The learned trial Court shall hear the parties again and consider their arguments independently or any observations, which might have been made in the earlier order by the predecessor. The consent given by the parties or their counsel for remanding the matter is without prejudice to their rights and contentions in any manner.

[J.H.BHATIA, J.]